



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FF

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy that was served on the Tenant on January 23, 2018
- b. An order that the landlord(s) comply with the Act, regulations and/or tenancy agreement.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was personally served on the Tenant on January 23, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord(s) as they acknowledged service of the document. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated January 23, 2018?
- b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulations and/or tenancy agreement.

Background and Evidence:

The tenancy began on July 1, 2003. There is a dispute as to whether the tenancy agreement is in writing. The tenant stated the parties signed a one page document although she could not locate that document. The landlord testified the parties did not

have a written tenancy agreement. The present rent is \$830 per month payable in advance on the 5th day of each month. There is a dispute as to the amount of the security deposit/pet damage deposit paid by the Tenant.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

The landlord(s) seeks to end the tenancy based on the following evidence:

- He and his wife lived in the rental unit for many years prior to 2001. They purchased a new home and moved to it prior to the birth of their second child.
- The rental unit was rented to the tenant in 2003.
- In January 2017 he and his wife (BO) separated.
- His wife BO has lived in three different rental units since the separation and she wishes to relocate to home which is the subject of these proceedings.
- Since October 2017 BO has been paying rent of \$1400 per month.
- As a result of the tenant's failure to comply BO has been unable to give notice to end the tenancy in her present rental unit.

The tenant gave the following evidence:

- She does not dispute that BO has the right to relocate the rental property. However, she strongly objects to short period of time which she has to find a new place.
- The vacancy rate in the area is near zero and she has been unable to find a suitable rental unit to move to.
- She has significant problems which limit where she can move to including:
 - She has mobility issues and cannot do stairs.
 - She is on disability and the lack of affordable rental accommodation is a significant problem in this community.
 - She is in her mid 50's with an elderly dog and thus requires a fenced yard.
- She had made offer on a trailer that has been accepted and is set to close on June 5, 2018. She requests that she be permitted to remain in the rental unit until June 12, 2018 in order for her to complete an orderly move.

- She has lived in the rental unit for over 15 years and has a large number of personal belongings.

The landlord responded stating they wished an Order of Possession as quickly as possible for the following reasons:

- They have done everything correctly under the Residential Tenancy Act and are entitled to an Order of Possession.
- If they receive an Order of Possession in the near future his wife BO will give notice to end tenancy in her present place to end the tenancy at the end of May 2018. This would give the landlords an opportunity to thoroughly clean the rental unit and make appropriate renovations.
- The landlords further stated they have another house they could rent to the tenant until she finds a place to move to. The tenant refused this offer on the basis that the house did not have a yard, it was in an unsafe area and it would involve the cost of moving twice.

Analysis:

I accept the evidence of the landlords and I determine that BO has a good faith intention to move into the rental unit as soon as reasonably possible. As a result I dismissed the tenant's application for an Order to cancel the 2 month Notice to End Tenancy without liberty to re-apply.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order of Possession.

The Act does not specify the date on which the Order of Possession should be set. As a result I determined that an arbitrator has the discretion as to when to set the effective date of the Order of Possession provided it is reasonable in the circumstances.

After carefully considering all of the evidence I determined that it was appropriate to set the effective date of the Order of Possession for June 10, 2018. I recognize this is an unusually long time after the hearing but in the circumstances I determined this was appropriate for the following reasons:

- The tenancy was 15 years in length.

- The tenant has found alternative accommodation and as that transaction is set to complete on June 5, 2018.
- The tenant has health issues that limit what she can reasonably do.
- I determined the landlord would not be significantly prejudiced by such a date. At present the earliest date could legally end the tenancy in the rental unit she is presently in is May 31, 2018. As a result of this determination that date would be delayed by one month.
- The landlord BO has the legal right to remain where she is for an extra month.
- I set the effective date of June 10, 2018 which is the first Sunday after the closing date. If the tenant fails to vacate the landlord(s) would be entitled on the following Monday to obtain a Writ of Possession from the Supreme Court of British Columbia and take steps to enforce the Writ.

Conclusion:

I dismissed the Tenant's application without leave to re-apply. I granted an Order of Possession effective June 10, 2018.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

This decision is final and binding on the parties.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Residential Tenancy Act.

Dated: April 12, 2018

Residential Tenancy Branch